

## **REMARKS**

The issues outstanding in the new, non-final Office Action of April 17, 2009, are solely the rejections under 35 U.S.C. 103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

Claims 1, 2, 7, 10-13 and 28-31 have been rejected under 35 U.S.C. 103 over Schmukler '135 taken with Tanaka '838. Reconsideration of this rejection is respectfully requested. Schmukler discloses an adhesive composition for bonding polyolefin substrates to polar materials, employing a composition comprising a graft copolymer with a polyethylene backbone, grafted with at least one grafting monomer comprising a polymerizable ethylenically unsaturated carboxylic acid or acid anhydride, and a blending resin containing a high density polyethylene and polypropylene, these components being adhered by blown film coextrusion or other extrusion or blow molding techniques. See claim 1. Patentees teach, for example at column 1, lines 11-35, that their high density polyethylene (HDPE) based extrudible adhesives have higher temperature resistance and better moisture barrier than those based on low density polyethylene or linear low density polyethylene (LLDPE). The compositions of the invention thus clearly exclude LLDPE. Accordingly, in addition to the deficiency noted at page 3 of the Office Action, that Schmukler does not teach that its graft copolymer can be replaced with a blend comprising a metallocene polyethylene, and a polypropylene homopolymer or copolymer, the reference also does not teach the use of LLDPE, which is present in the current compositions.

The Office Action further cites Tanaka, arguing that it teaches a modified polypropylene comprising graft of an unsaturated carboxylic acid or derivative and a modified polyolefin comprising the graft of an unsaturated carboxylic acid. The Office Action further argues, at page 4, that although a metallocene polymer is not disclosed, "it is generally known in the art that metallocene catalysts result in compositions with more uniform compositions and better properties." No basis for this allegation is provided. Moreover, the Office Action argues that "co-grafted" is a method limitation that does not distinguish the present claims from the prior art because cograftering would not result in a patentably different product from separately grafted monomers. Applicants disagree with both of these assertions.

On the one hand, the unsupported allegation of metallocene catalysts would necessarily give better properties is unsupported. Where the PTO seeks to rely on a chemical theory, it must provide evidence supporting that theory. See *In re Grose*, 592 F.2d 1161, 201 USPQ 57 (CCPA 1979). Moreover, a cograftered blend of polypropylene and polyethylene

would in fact be expected to be different from separately grafted polypropylene and polyethylene, as the adhesion characteristics of the resultant combination would be different depending on the grafting method.

Thus, even considering the combination of references, there are several serious deficiencies which do not result in a composition as presently claimed. Withdrawal of this rejection is accordingly respectfully requested.

Claims 1-7, 10-17, 21-24 and 26-31 have been rejected under 35 U.S.C. 103 over Bothe '630 taken with Schmukler and Tanaka. Reconsideration of this rejection is also respectfully requested.

As admitted at page 5 of the Office Action, Bothe does not teach the adhesive layers in between the foil and the polypropylene, or between the polyester and polypropylene. In order to provide a teaching for the claimed tie layer composition, the Office Action relies on Schmukler and Tanaka as employed above. The considerable deficiencies of these references having been discussed above, it is clear that this rejection also cannot stand, and withdrawal thereof is respectfully requested.

Finally, claims 8 and 18-20 have been rejected under 35 U.S.C. 103 over Bothe taken with Schmukler and Tanaka, further in view of Moore '160. Reconsideration of this rejection is also respectfully requested, inasmuch as it again relies on Schmukler and Tanaka for a teaching which, as discussed above, these references cannot provide.

Accordingly, the claims of the application are submitted to be in condition for allowance. However, should the Examiner have any questions or comments, he is cordially invited to telephone the undersigned at the number below.

Respectfully submitted,

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